SUBJECT INDEX.

Table of Cases Cited.

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1947.

No. 157

EDWARD M. WINSTON,

Petitioner,

vs.

COUNTY OF COOK, a Municipal Corporation of the State of Illinois, and WILLIAM J. TUOHY, Successor State's Attorney,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

THERE HEARD ON APPEAL FROM THE CIRCUIT COURT OF COOK COUNTY.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

Opinions of the Court Below.

The historical background of appellate review of this case is best described in words of the Supreme Court of Illinois when it said in the case of *People* v. *Winston*, 399 Ill. 311, at page 312:

"This cause is now before us for the third time. The decisions upon the two former occasions are re-

ported in *People ex rel Courtney* v. *Ashton*, 358 Ill. 146, and *Ashton* v. *County of Cook*, 384 Ill. 287."

Jurisdiction.

Petitioner invokes the *certiorari* provisions of Section 237(b) of the Judicial Code (Title 28, U. S. C. A., Sec. 344).

Respondents resist the petition on the following grounds:

1. The Federal constitutional questions sought to be presented are *not* substantial.

2. The Fourteenth Amendment of the Constitution of the United States does not, in guaranteeing equal protection of the laws, assure uniformity of judicial decisions.

3. The judgment or judgments sought to be reviewed are based upon non-Federal grounds adequate to support it, or them.

4. Want of Federal question.

In order to facilitate consideration of the aforesaid points, the respondents have hereinafter argued three broad general propositions in support thereof. But, by this course of action we do **NOT** waive any of those specific individual objections to the petition.

STATEMENT OF FACTS.

Examination of the full opinion recorded in 384 Ill. 287 (Petition, page 52) reveals that a bare terse statement was ruthlessly exterpetated from that judgment and quoted by petitioner as an admission by the Supreme Court of Illinois of alleged "arbitrary action *ex post facto.*" Therefore, we unqualifiedly deny any such alleged admission.

The brief of the petitioner recites in several places that "there has never been any trial by evidence" in this record. Suffice to say that if there were any merit to such contention it is readily dissolved by the following statements (obviously inconsistent therewith) made by petitioner. At the top of page 11, in the petition, we find, "Said Winston abided his said answer and counterclaim, (Tr. 22)". This legal position and action of petitioner was duly noted in the opinion reported in 399 Illinois 311 (page 66 of Petition), where it appears at page 67 of the petition, as follows:

> "Winston elected to stand by his pleading and thereupon final judgment was entered, * * *."

The identical position was taken by the petitioner in the second appeal (384 Ill. 283, page 52 of the Petition), as it appears from that opinion (page 57 of the Petition), as follows:

> "The State's Attorney's motion to strike Winston's answer and counterclaim was sustained *and Winston elected to stand by his pleading*, whereupon final judgment was entered against him." (Italics added.)

Petitioner has been a lawyer for many years, by his own statement, therefore, the advisability and possible

consequential results of abiding by an answer and pursuing that course of action should have been well known to him, if the argument regarding lack of trial of evidence is of any great moment.

The record, as well as the opinions, are utterly devoid of anything pertaining to petitioner's license to practice law. His privilege of practicing law was not in issue either directly or indirectly at any time, and still remains valid and wholly unaffected.

ARGUMENT.

I.

Petitioner's alleged constitutional questions are without the slightest substance.

The judgments sought to be reversed are each based upon a non-federal ground adequate to support them. Furthermore, there are no true federal questions involved here, and alleged federal constitutional questions, sought to be presented are not substantial. Examination of the pseudo questions asserted, reveal that they have no real or necessary relation to the decision of this case. There is an utter paucity of the requisite meritorious jurisdictional statements to bring the instant cause before this tribunal on review.

Studied examination of the petition fails to disclose any issue of such intrinsic importance upon which a declaration of law is now required for its most authoritative determination. Nothing in the instant petition requires this Court to intervene to quiet any conflict which it alone can compose, for there is no true conflict presented.

II.

The Fourtenth Amendment does not, in guaranteeing equal protection of the laws, assure uniformity of judicial decisions.

The gist of the petition appears to be that the Supreme Court of Illinois allegedly departed from established law and thus deprived the petitioner of "due process of

law and equal protection of the law." We do not, and cannot agree with the theory of the petitioner's case.

Nor do we by answering this line of argument concede, for a moment, that the Supreme Court of Illinois departed from established law. For that is not the basis of the judgments here complained of. However, if there were any merit to petitioner's theory, which respondents deny, the following cases go far toward cutting the ground beneath Winston's basic position:

In *Bristow Battery Co.* v. *Board of Commissioners of Rogers County, Okl.*, 37 F. (2d) 504 at pages 507 to 508 the court there said:

"Moreover, conceding, without deciding that the State Supreme Court departed from and changed the prior established rule in that State in all of the respects claimed by appellee in its ruling in the *Bristow Battery Co.* and *Eaton Cases,* that fact, if it be a fact, does not present a Federal question. Even if appellee had been a party in the two causes in the State Supreme Court the rulings of the court in those cases would not have deprived it of its property without due process, much less can that claim be sustained under the facts stated." "When the parties have been fully heard in the regular course of judicial proceedings, an erroneous decision of a state court does not deprive the unsuccessful party of his property without due process of law, within the fourteenth amendment of the constitution of the United States." *Central Land Co.* v. *Laidley,* 159 U. S. 103, 112, 16 S. Ct. 80, 83, 40 L. Ed. 91. In *Patterson* v. *Colorado,* 205 U. S. 454, 460, 461, 27 S. Ct. 556, 557, 51 L. Ed. 879, 10 Ann. Cas. 689, we find this:

> "It is argued that the decisions criticized, and in some degree that in the present case, were contrary to well-settled previous adjudications, of the same

court, and this allegation is regarded as giving some sort of constitutional right to the plaintiff in error. * * * Even if it be true, as the plaintiff in error says, that the Supreme Court of Colorado departed from earlier and well-established precedents to meet the exigencies of this case, whatever might be thought of the justice or wisdom of such a step, the Constitution of the United States is not infringed. It is unnecessary to lay down an absolute rule beyond the possibility of exception. Exceptions have been held to exist. But, in general, the decision of a court upon a question of law, however wrong and however contrary to previous decisions, is not an infraction of the 14th Amendment merely because it is wrong or because the earlier decisions are reversed." And at page 459 of 205 U. S., 27 S. Ct. 557:

"The requirement in the 14th Amendment of due process of law does not take up the special provisions of the state Constitution and laws into the 14th Amendment for the purposes of the case, and in that way subject a state decision that they have been complied with to revision by this court." In *Tracey* v. *Ginzberg*, 205 U. S. 170, 27 S. Ct. 461, 463, 51 L. Ed. 755, the court said:

"The Fourteenth Amendment did not impair the authority of the states, by their judicial tribunals, and according to their settled usages and established modes of procedure, to determine finally, for the parties before them controverted questions as to the ownership of property, which did not involve any right secured by the Federal Constitution, or by any valid act of Congress, or by any treaty."

In *Bacon* v. *Texas*, 163 U. S. 207, 16 S. Ct. 1023, 1029, 41 L. Ed. 132, Section 10 of Article 1, U. S. Constitution, was under consideration. After noting that in suits brought on negotiable bonds in a United States court the Supreme Court on appeal therefrom would give effect

to decision of the State court rendered prior to the issuance of the bonds rather than to later decisions changing the prior ruling in said State court, then said:

> "This court has no jurisdiction to review a judgment of a state court made under precisely the same circumstances, although such state court thereby decided that the state legislation was void which it had prior thereto held to be valid. It has no such jurisdiction, because of the absence of any legislation subsequent to the issuing of the bonds which had been given effect to by the state court. In other words, we have no jurisdiction, because a state court changes its views in regard to the proper construction of its state statute, although the effect of such judgment may be to impair the value of what the state court had before that held to be a valid contract."

Along similar lines is the ruling in *Patterson* v. *Colorado,* 27 S. Ct. 556, 205 U. S. 454, 51 L. Ed. 879, where it was said, "In general the decision of a court upon a question of law, however wrong and however contrary to previous decisions, is not any infraction of this Amendment merely because it is wrong or because earlier decisions are reversed." The court was there referring to the Fourteenth Amendment.

The case of *O'Neil* v. *Northern Colorado Irrigation Co.,* 37 S. Ct. 7, 242 U. S. 20, 61 L. Ed. 123, stands for the proposition that something more than a mere departure from a rule of property established by prior decisions would have to be shown before a party could be held to have been deprived of property without due process of law.

Reaching, what is perhaps the basic question in issue here, the opinion in *Emmons* v. *Smitt,* 58 F. Supp. 869, contains the following on page 876: "Is failure on the part of the Supreme Court of the state to follow its own

decisions according to the way we might interpret them violation of a litigant's constitutional rights? *We think not.*" (Italics added) Citing *Erie R. Co.* v. *Tompkins*, 304 U. S. 64, 58 S. Ct. 817, 82 L. Ed. 1188, 114 A. L. R. 1487.

In the case of *Brinkerhoff-Faris Trust & Savings Company* v. *Hill*, 281 U. S. 673, at page 680, this Court said:

> "It is true that the courts of a state have the supreme power to interpret and declare the written and unwritten laws of the state; that this court's power to review decisions of state courts is limited to their decisions on federal questions; *and that the mere fact a state court has rendered an erroneous decision on a question of state law, or has overruled principles or doctrines established by previous decisions on which a party relied, does not give rise to a claim under the 14th Amendment or otherwise confer Appellate jurisdiction on this court.*" (Italics added.)

This emphasized phraseology is supported by a long line of cases cited in the opinion. The foregoing quotation is presented solely for the proposition that *even if* the Illinois Supreme Court overruled principles or doctrines established by previous decisions, petitioner would still be without a meritorious contention or position before this Court.

III.

The right to practice law is not a Property Right and is not involved in this case, in any event.

This Court, in clear unequivocal phraseology ruled that "the right to practice law is not a property right" in *Emmons* v. *Smitt, et al.*, 58 F. Supp. 869, 874.

The rule of law is quite clear that the right to practice law is not secured by the constitution, nor by any

law of the United States, such right is a privilege. *Emmons* v. *Smitt,* 149 F. 2d. 869; *Bradwell* v. *State of Illinois,* 16 Wall. 130, 21 L. Ed. 442; *In re Lockwood,* 159 U. S. 116, 14 S. Ct. 1082; *In re Thatcher,* 190 Fed. 969, 975; *Ayres* v. *Hadaway,* 303 Mich. 589, 6 N. W. 2d. 905.

There is nothing whatever, in the proceedings had below, which tend either directly or indirectly to hamper petitioner in the practice of his profession, or to prevent him from so doing.

The aforesaid proposition is discussed, in this brief solely to indicate that petitioner's basic premise on this facet of the case is unsound. This, for the manifest reason that denial of counsel fees does not and cannot eradicate his license, nor impair the same.

Furthermore, predicated upon the authorities cited, under this proposition III, respondents deny that petitioner has a "vested right" as urged in his petition.

Summary.

We look to Winston's "prayer for relief" in an effort to ascertain a summarization of his position. Petitioner, there, urges he did not receive due process of law nor equal protection of the law, in the Courts of the State of Illinois. With reference to the contention of lack of due process we say that due process of law requires only the opportunity to be heard and that the petitioner has had ample opportunity; has fully presented his claims and was ruled against. The Supreme Court of Illinois wrote comprehensive and exhaustive opinions in all three appeals, hence urging denial of equal protection of the law is readily and properly countered by the obvious—the alleged infringement is not genuine but merely an illusory argument.

Conclusion.

It is therefore respectfully submitted that this case is not a proper one for review by *certiorari* in this Court, and that the petition for writ of *certiorari* should be denied.

WILLIAM J. TUOHY,
State's Attorney of Cook County, Illinois,
Attorney for the Respondents.

GORDON B. NASH,
MELVIN F. WINGERSKY,
JACOB L. SHEER,
JACOB SHAMBERG,
Of Counsel.